

**STEPHENSON
HARWOOD**
pensions law group

CLEAR VIEWS

Quarter four 2021 update

OVERVIEW

Priorities for trustees this quarter are to:

- ensure their statutory transfer out procedures are updated to take account of the new obligations and restrictions in force **from 30 November 2021**; and
- start thinking about steps needed to comply with the Pensions Regulator's (**Regulator**) draft code of practice.

In addition, trustees should be aware of guidance notes and codes produced by the Regulator on (i) how it will exercise its new powers under the Pension Schemes Act 2021 (**PSA**); and (ii) when default arrangements in defined contribution schemes may be inadvertently created, giving rise to additional obligations for trustees.

Further information on all of these topics can be found in our additional materials, referenced in the table below.

KEY DEVELOPMENTS

Development	Date of change	Links to further information
<p>New obligations on trustees when dealing with statutory transfers out.</p> <p>Trustees should ensure that their due diligence and statutory transfer out process is revised to take account of the new obligations and restrictions introduced by The Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021.</p> <p>Under the new regulations, statutory transfers out will not be permitted where a 'red flag' is present. If there are any 'amber flags' present, the member must take scam advice from the Money and Pensions Service before the transfer can occur.</p>	30 November 2021	Please see our briefing on this topic here .
<p>Trustees should start considering compliance with the Regulator's single code of practice.</p> <p>The Regulator published its draft code of practice for consultation in March 2021. Whilst the final version is not expected until Spring 2022, we do not expect substantial changes to be made to the current draft. There are certain elements that trustees will need to comply with as soon as the code comes into force. Given the amount of work that may be required to ensure compliance,</p>	Expected in force Summer 2022 with immediate compliance required for certain elements	The Regulator's draft code can be found here . Please see our flyer on the topic attached.

<p>trustees should start to think about this project sooner rather than later.</p>		
<p>The Regulator has issued guidance on how it will enforce its new criminal powers in practice.</p> <p>The new criminal powers introduced by the PSA are drafted very widely and have potentially far-reaching application. The Regulator has issued its criminal offences policy providing guidance on how it will prosecute these offences in practice.</p>	<p>The policy was published on 29 September 2021</p>	<p>The Regulator's criminal offences policy can be found here.</p> <p>Further analysis can be found in our October snapshot here.</p>
<p>The Regulator has issued guidance on how it will exercise its new contribution notice powers.</p> <p>The PSA extended the Regulator's contribution notice powers. The guidance sets out examples of behaviour and categorises these by whether the Regulator would consider itself compelled to intervene and use its new powers.</p>	<p>September 2021</p>	<p>The Regulator's code of practice can be found here.</p> <p>Further analysis can be found in our October snapshot here.</p>
<p>The Regulator is consulting on how it will exercise its new powers under the PSA in relation to pursuing civil and/or criminal routes and imposing fines.</p> <p>There are some situations that could arise where the Regulator could exercise both its civil and criminal powers. The Regulator has set out how it proposes to approach these situations.</p> <p>The PSA also provides the Regulator with the power to impose fines of up to £1 million in certain situations. The consultation sets out proposed bands of the level of fine that the Regulator would seek to impose based on the degree of culpability of the actor and the degree of harm suffered by scheme members as a result.</p>	<p>The closing date for the consultation is 22 December 2021 with a final policy expected next year</p>	<p>The Regulator's proposed approach can be found here.</p> <p>Further analysis can be found in our October snapshot here.</p>
<p>Inadvertent creation of default arrangements.</p> <p>The Regulator has updated its guidance for defined contribution schemes on when a default arrangement is inadvertently created when member funds have been mapped to new funds as a result of the gating (or closing) of original default funds due to market volatility. Trustees need to consider what members have been told both pre- and post-gating and what the terms were of the original consent given by members to investment of their contributions. The answers to</p>	<p>The guide was updated in October 2021</p>	<p>The guidance can be found here.</p> <p>Further analysis can be found in our October snapshot here.</p>

those points will then dictate whether a new default arrangement has been created and what trustees need to do to address the position.



The Stephenson Harwood pensions law group has been promoted to tier 1 and tier 2 by the Legal 500 for pensions disputes and pensions advisory work. Please see the Legal 500 website [here](#) for more information.

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